

- BPP would inconvenience callers by increasing call set-up times and requiring many callers to repeat information for two separate operators,⁴⁷
- BPP would alter the routing of fewer than 20 percent of all operator assisted calls,⁴⁸ and
- BPP would strand millions of dollars invested in "smart" payphone technology.⁴⁹

This evidence is too overwhelming to ignore. Indeed, the Commission implicitly concedes that *on the present record* BPP is not in the public interest today, when it refers to the possible effect that local number portability may have in the future.⁵⁰ It errs, however, in asserting that the possibility of a future change in circumstances -- the effect of which is far from certain⁵¹ -- justifies continuing a docket when the remainder of the record demonstrates the proposal is not in the public interest. The Commission should not -- and

⁴⁷ *Id.* at 22-28.

⁴⁸ Frost & Sullivan, Inc., *Report on Applicability and Costs of Billed Party Preference: A Market Impact Report* (Oct. 1993), submitted in CC docket No. 92-77 by CompTel, Nov. 22, 1993.

⁴⁹ CompTel Comments at 19 (Aug. 1, 1994).

⁵⁰ *Second Further Notice*, at ¶ 4.

⁵¹ The Commission claims that local number portability may reduce the "incremental cost to query a database for the customer's preferred OSP." *Id.* at ¶ 4. It does not explain why querying a number portability database for this information might be less expensive than querying the LECs' LIDB database for it, as was proposed initially. Even if one accepted the premise that this might make BPP somewhat less costly, the presence of local number portability does not affect the significant expense OSPs would have to incur to upgrade their networks to OSS-7 capabilities, and would do nothing to affect call routing delays, the need for two-operators in many circumstances, and the increase in entry barriers the proposal represents.

cannot -- disregard the record before it, even if it hopes that, someday, somehow, the costs and benefits of BPP might change.⁵²

In addition, the continued pendency of the BPP proposal has a subtle, but pernicious effect on the operator services industry. As a practical matter, the possibility that BPP could be mandated makes it significantly harder for OSPs to obtain access to capital and increases its debt servicing costs. Given the risk that BPP presents for operator services as a stand alone business, investors demand a higher premium on their investment, and OSPs must pay more to borrow money than other carriers would. This raises OSPs' costs and puts pressure on the OSP to raise its end-user rates.

Furthermore, the pendency of BPP also affects the behavior of aggregators in ways that increase OSP costs. Since BPP could threaten the ability of many aggregators to generate money through the use of their telephones, many aggregators have shortened the period over which they seek to recover their investments. Rather than amortizing their costs over the useful life of the equipment, many aggregators are demanding commissions and premise-imposed fees that allow them to recover their expenses in the 2-3 year window that it would take to implement BPP, if it is adopted. This behavior increases an OSP's costs -- who has to pay aggregators ever increasing commissions -- and increases pressure upon the OSP to raise its rates to cover those costs. Thus, the pendency of BPP exacerbates the very problem that the Commission is trying to fix. For these reasons, the Commission should expressly reject BPP as an option at this time.

⁵² If circumstances do change, the Commission is free to open a new docket to re-examine the proposal. Nothing would be served by holding this docket open awaiting that event, however, because the present record is not likely to be of significant use in evaluating BPP under a different network routing topology.

VI. FORBEARANCE FROM INFORMATIONAL TARIFFS

The Commission also seeks comment on whether it should forbear from applying Section 226 informational tariff requirements to some or all OSPs.⁵³ Specifically, the Commission seeks comment on whether it could forbear from applying the informational tariff requirement if an OSP either (1) provided the FCC's proposed rate disclosure or (2) certified that it did not charge rates above the proposed benchmark.⁵⁴ CompTel submits that the Commission may forbear from applying the informational tariff requirement, but that, if it does so, such forbearance should be permissive and should apply equally to all nondominant OSPs, regardless of the rates that they charge.

New Section 10(a) of the Communications Act allows the Commission to forbear from applying any regulation or provision of the Communications Act if it determines that enforcement of the regulation is not necessary to ensure that rates are just and reasonable or to protect consumers and the proposed forbearance is consistent with the public interest.⁵⁵ The Commission may make this determination because the rates and policies of nondominant OSPs are dictated by market forces. The OSP presubscription environment is highly competitive, with scores of OSPs competing with each other to obtain presubscription agreements from aggregators. Aggregators have the power to restrain OSP practices which would harm or upset customers using telephones at the aggregator's location. In addition, the Commission's policies under TOCSIA have given consumers the ability to reach OSPs of

⁵³ *Second Further Notice*, at ¶ 40.

⁵⁴ *Id.*

⁵⁵ 47 U.S.C. § 160(a). The Commission also has additional forbearance authority under TOCSIA. *See* 47 U.S.C. § 226(h)(1)(B).

their choice, regardless of which carrier is presubscribed to the telephone. The Commission has characterized this ability as "the best regulator of OSP rates."⁵⁶ The overwhelming increase in dial around traffic -- fueled by OSP competitors aggressively advertising their dial around codes and products -- is validation that the Commission's consumer protection practices are working. Informational tariffing is not necessary to ensure that these market forces continue to work.

If the Commission decides to forbear from the informational tariff requirement, it should do so for all OSPs, without regard to the rates they charge. As explained previously, the Commission has no valid basis for distinguishing among OSPs based upon the Commission's proposed 115 percent benchmark. The Commission therefore has no basis for conditioning forbearance upon a mandatory price disclosure for those above the benchmark rate. The Commission must apply its forbearance policies equally to all nondominant OSPs.

In addition, the Commission should not adopt a mandatory detariffing requirement, if it decides to forbear from the informational tariffing requirement. Permissive detariffing equally satisfies the Commission's goal of relieving OSPs of unnecessary burdens and granting nondominant OSPs the flexibility to react to the market and to consumer needs. However, tariffing provides benefits to the carrier and to the public, reducing transaction costs and promoting the public dissemination of its policies and rate structure. Informational tariffing may prove especially beneficial to the OSP in the operator services context, where users of its service may not have had a previous relationship with the OSP. OSPs should be given the flexibility to determine whether to proceed by informational tariff or by individual arrangements.

⁵⁶ *TOCSIA Final Report*, at 18.

Assuming that at least some OSPs will continue to file informational tariffs, the Commission also seeks comment on whether it should revise its tariff filing requirements in any way.⁵⁷ CompTel believes that the Commission should not modify its filing requirements at this time. The Commission's rules are consistent with TOCSIA, and minimize the filing burdens on OSPs. In particular, the Commission's policy of allowing OSPs to tariff a range of rates gives consumers fair notice of the maximum charge they may be assessed and avoids imposing upon OSPs the unnecessary burden of filing tariffs every time a rate changes within in the range specified by the OSP. Requiring "specific and discernable" rates, rather than the maximum rate, would not give any additional benefits to consumers, to carriers, or to the Commission.⁵⁸ Accordingly, the Commission should continue to allow OSPs maximum flexibility in describing their rates and policies in informational tariffs.

CONCLUSION

For the foregoing reasons, CompTel respectfully submits that the Commission may not adopt the price disclosure proposal contained in the *Second Further Notice*. The only record support for a benchmark rate distinguishing among OSPs supports the establishment of benchmarks as recommended in the Coalition Rate Ceiling proposal. The Commission, therefore, either should make an additional OSP disclosure apply at rates above the Coalition benchmark, or it should apply additional disclosure requirements to all OSPs, regardless of

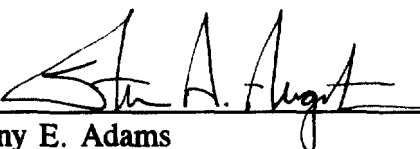
⁵⁷ *Second Further Notice*, at ¶ 45.

⁵⁸ Many of the abuses described by the Commission in its discussion of the rate range issue -- such as false allegations that the FCC had "approved" an OSP's rate -- would not be addressed by modifying the tariffing requirement. These are independent issues, which are more appropriately addressed in an individual enforcement context.

their rates. In any event, the Commission may not go beyond the disclosure authorized by Section 226(h)(2) of TOCSIA. Finally, the Commission should make explicit what is implicit in its proposed alternative to BPP: that BPP is contrary to the public interest.

Respectfully submitted,

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July 17, 1996

ATTACHMENT 1

Ex Parte Presentation

Billed Party Preference for 0+ InterLATA Calls
CC Docket No. 92-77

The Competitive Telecommunications Association

June 22, 1995

**Ex Parte Presentation of the Competitive Telecommunications
Association in Support of the Coalition Rate Ceiling Proposal**

The Coalition Rate Ceiling provides a simple, enforceable maximum rate which balances legitimate OSP cost recovery with consumer interests in obtaining low rates. The Rate Ceiling is comparable to other customary and accepted alternatives for end users when placing calls away from their homes or offices. For example:

Person to Person Calls

- The Coalition Rate Ceiling for a 1 minute call is less than AT&T's current charge for daytime calls in the 1911-3000 mile rate band (\$4.75 vs. \$4.81) and, for a 9 minute call, exceeds AT&T's person to person rate by only 9%.

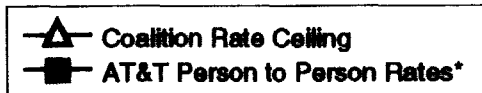
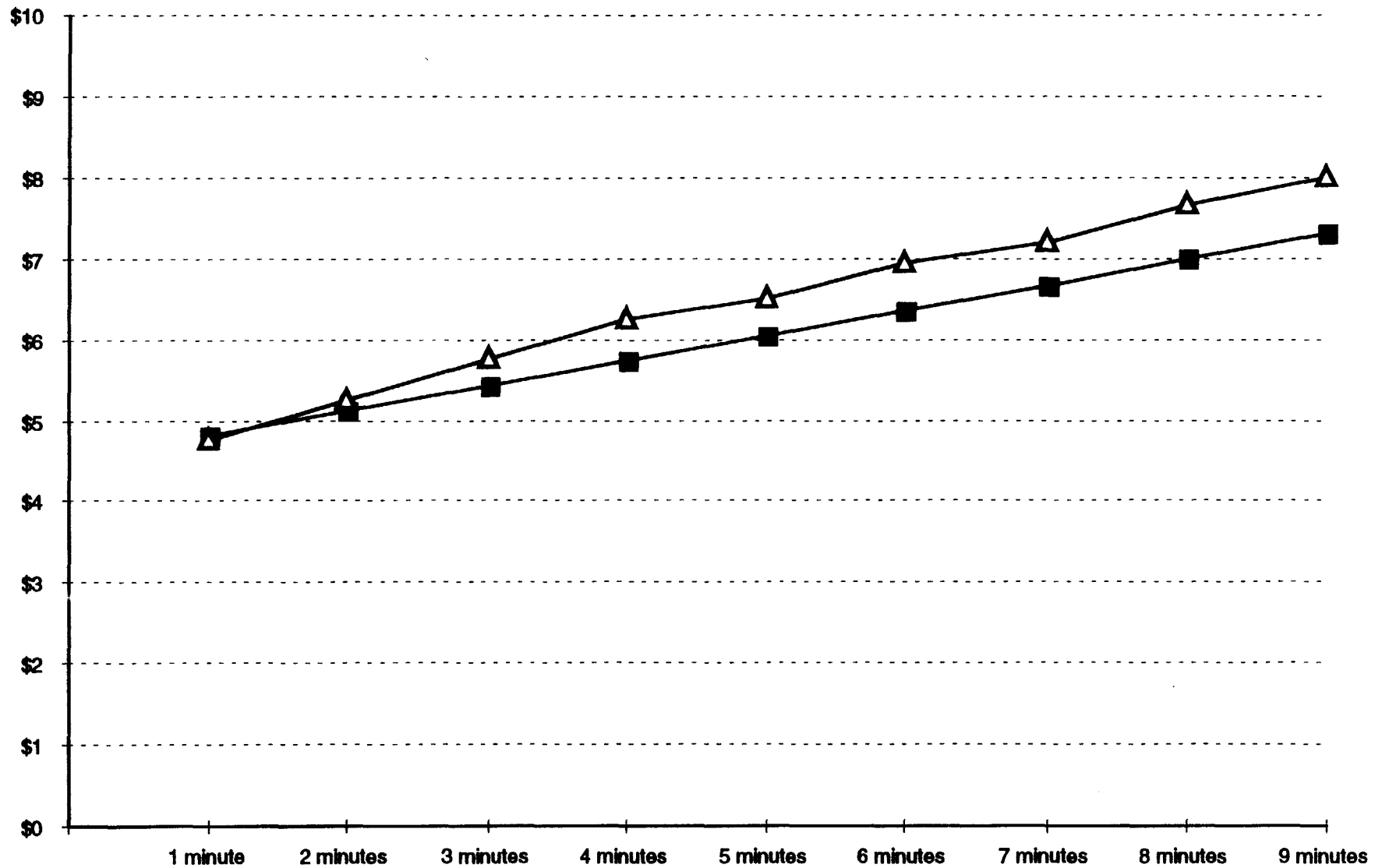
Calling Card & Live Operator Calls

- The Coalition Rate Ceiling is lower than current charges for several call alternatives, including hotel direct dial rates, cellular telephone roaming charges, and intrastate rate caps adopted by state regulatory commissions in Illinois and Texas.
- Comparisons made to the rates of large carriers often exclude charges paid by end users for some alternatives, such as fees charged by hotels for local and dial around calls. A survey found Washington, D.C. hotels using AT&T as their OSP typically charge 75¢ to \$1.00 per call, often including calls made to 800 numbers for dial-around purposes. These charges are included in the OSP rates for long distance calls handled by competitive OSPs. A fair comparison of end user costs must add these charges to AT&T calls.
- When all fees paid by an end user are included, the Coalition Rate Ceiling exceeds comparable AT&T rates by 50% or less for many operator assisted call types.
- A 10 minute call using Sprint's Debit Card (.58¢/minute) is only 25% less than the Coalition Rate Ceiling, even though debit cards avoid significant OSP costs such as third party validation, bill processing, third party billing fees, bad debt, uncollectible debt, billing inquiry, and phone owner commissions. These costs can account for 25% or more of an OSP's costs.

The Coalition Rate Ceiling should be established as a benchmark for a presumption of reasonableness and the billed party preference proceeding should be terminated.

Person to Person Rate Comparison

CC Docket No. 92-77
June 22, 1995

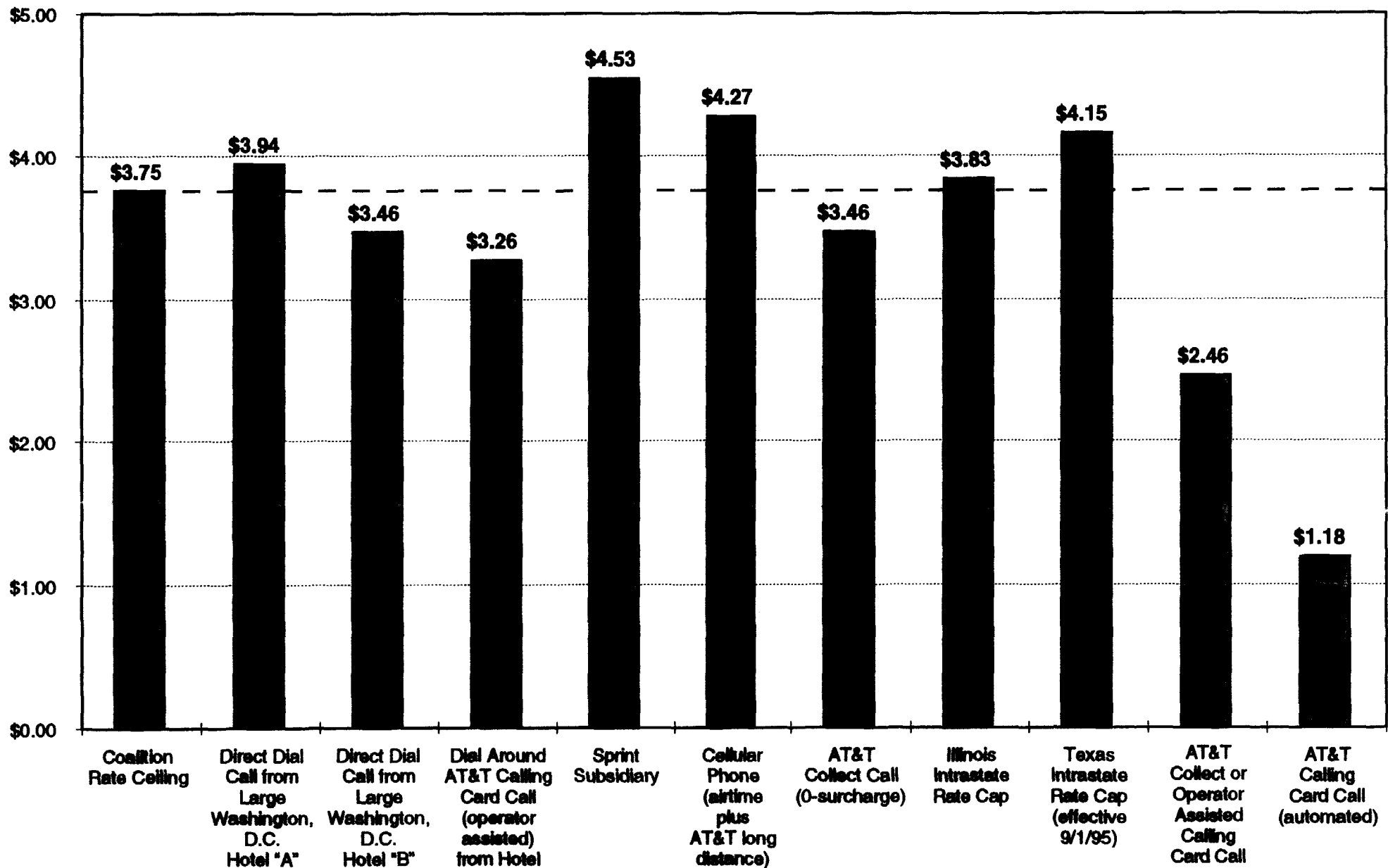


* AT&T daytime rates, 926-1910 or 1911-3000 mile distance. Assumes call is billed to a LEC calling card.

Away From Home Call Alternatives

1 Minute Calls

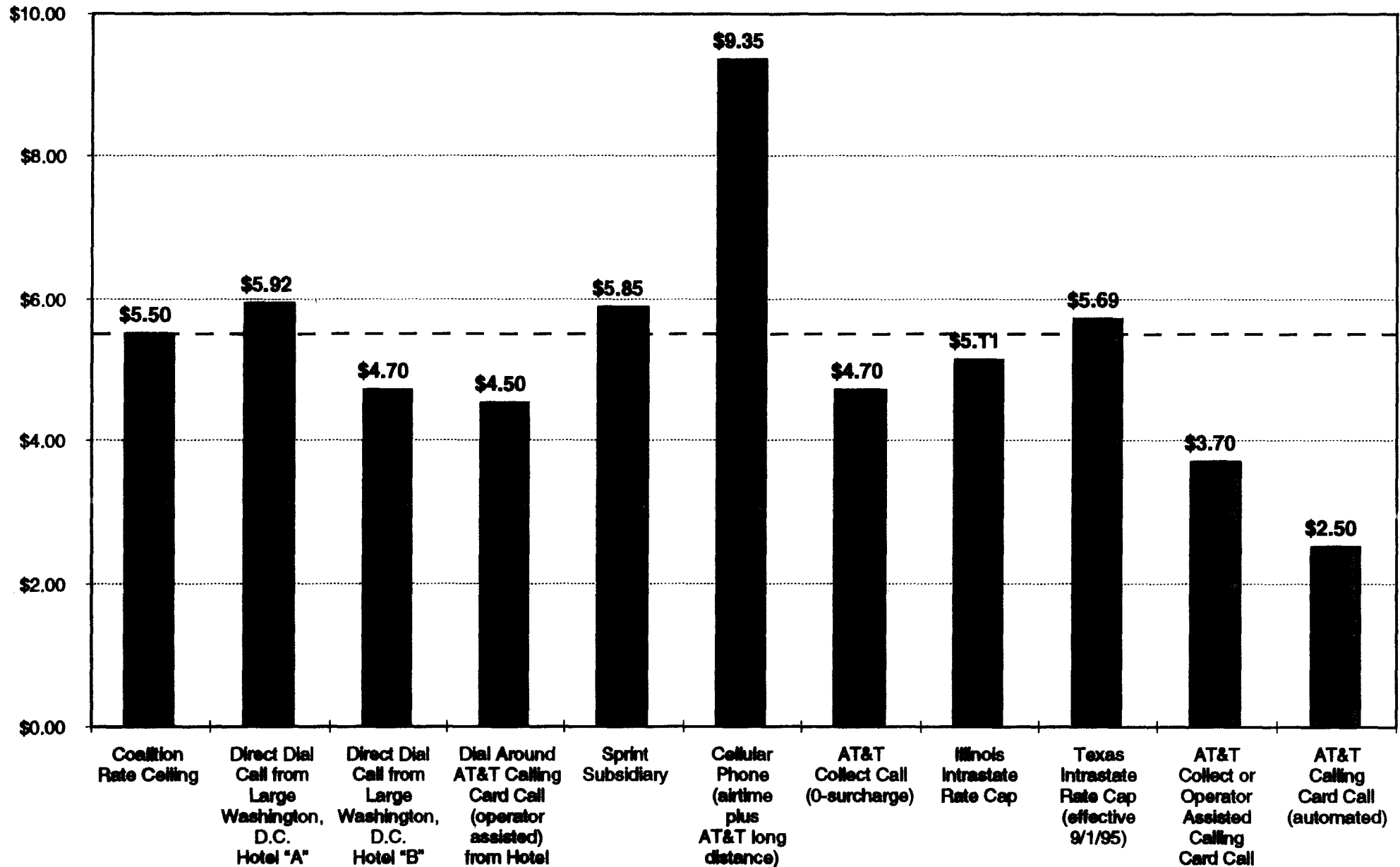
CC Docket No. 92-77
June 22, 1995



Away From Home Call Alternatives

5 Minute Calls

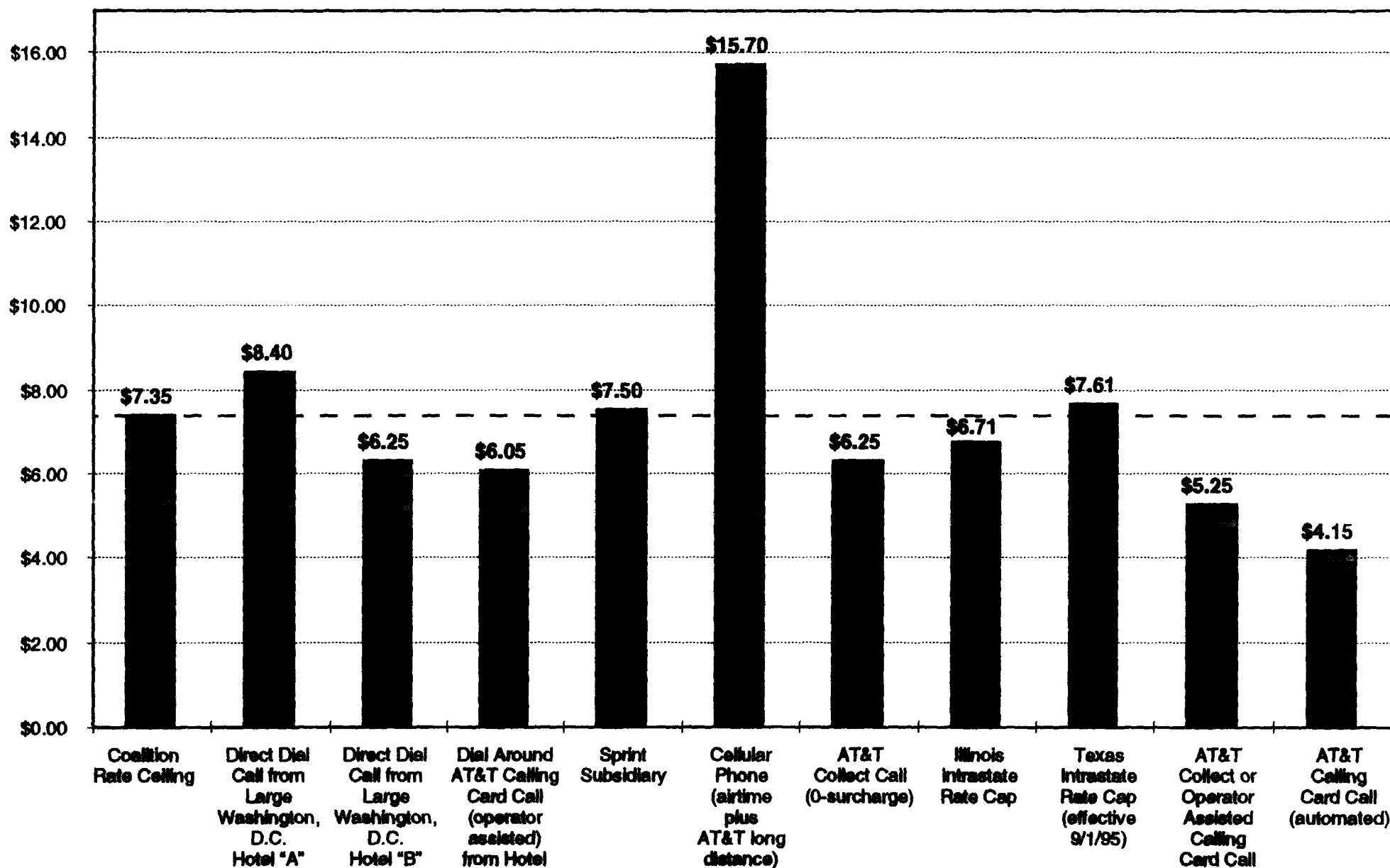
CC Docket No. 92-77
June 22, 1995



Away From Home Call Alternatives

10 Minute Calls

CC Docket No. 92-77
June 22, 1995



SOURCES

1. Hotel "A" The Washington Court Hotel. The hotel stated that its direct dial rates equal AT&T operator assisted daytime charges plus a 60% surcharge. Charges are rounded to the nearest penny.
2. Hotel "B" The Ritz Carlton Hotel. The hotel stated that its direct dial rates equal AT&T operator assisted daytime charges plus a \$1 surcharge.
3. AT&T charges All AT&T charges were derived from AT&T Tariff F.C.C. No. 1 at daytime rates for a 926-1910 or 1911-3000 mile call.
4. Dial Around AT&T
Calling Card Call
(operator
assisted) from
Hotel AT&T charges (see above) plus a hotel surcharge of \$0.80 per call. Survey of Washington, D.C. area hotels reported surcharges ranging from \$0.75 to \$1 per call.
5. Sprint subsidiary ASC Telecom tariffed rates as of April 5, 1995. Charges are calculated according to Rate Schedule 2, which ASC estimated would be the rate for 50% of its minutes. Charges are those applied to a daytime 0+ LEC calling card call for a 1911-3000 mile call distance.
6. Cellular phone Charges applicable to a Cellular One mobile phone used on a roamer basis in non-SWBC mobile territories. Calls are billed at \$0.99 per minute plus a \$3 per day roaming fee plus AT&T's daytime dial station rate.
7. AT&T Collect Call
(0- surcharge) AT&T collect rates (see above) plus \$1 per call operator dialed surcharge.
8. Illinois
Intrastate Rate
Cap Illinois Commerce Commission rules \$ 771.605. Charges calculated for 0- call in the 125-292 mile rate band.
9. Texas Intrastate
Rate Cap Rate cap becomes effective September 1, 1995. Charges calculated for a 0- call in the 125-292 mile rate band. Charges are rounded to the nearest penny.

WASHINGTON D.C. HOTEL TELEPHONE CHARGES

| Hotel | Local Calls | Int'l / Cntrl | Calling Card | Direct Dial Long Distance Calls | OSP |
|------------------|-------------|---------------|--------------|---------------------------------|------|
| Capital Hilton | .90¢ | NC | .90¢ | \$1.50 + AT&T rates | AT&T |
| Grand | .95¢ | ** | .95¢ | 20% + AT&T rates | AT&T |
| Grand Hyatt | .75¢ | .75¢ | .75¢ | .75¢ + AT&T rates | AT&T |
| Hilton & Towers | .85¢ | NC | NC | AT&T rates | AT&T |
| Hyatt Regency | .75¢ | .75¢ | .75¢ | .75¢ + .20¢/min. | AT&T |
| Loew's L'Enfant | \$1.00 | \$1.00 | \$1.00 | \$1.00 + AT&T rates | AT&T |
| Madison | .90¢ | .90¢ | .90¢ | .90¢ + AT&T rates | AT&T |
| Mayflower | .85¢ | NC | NC | \$2.00 + AT&T rates | AT&T |
| Omni Shoreham | .75¢ | NC | NC | AT&T rates | AT&T |
| Park Hyatt | .75¢ | .75¢ | .75¢ | \$1.75 + AT&T rates | AT&T |
| Ritz-Carlton | \$1.00 | \$1.00 | \$1.00 | \$1.00 + AT&T rates | AT&T |
| Sheraton | .75¢ | NC | NC | 55% + AT&T rates | AT&T |
| Washington Court | \$1.00 | \$1.00 | \$1.00 | 60% + AT&T rates | AT&T |

NC = No charge

** = Rate under reconsideration

Notes: Survey conducted June 14-16, 1995 via telephone interview.

**Comparison of AT&T Rates with
Coalition Rate Ceiling Proposal**

| | | Duration | | | | | | | | |
|---------------------------|-------------------------------------------------------------------|----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|-----------|
| | | 1 minute | 2 minutes | 3 minutes | 4 minutes | 5 minutes | 6 minutes | 7 minutes | 8 minutes | 9 minutes |
| Calling Card Calls | AT&T Automated Operator [*] | 1.18 | 1.51 | 1.84 | 2.17 | 2.50 | 2.83 | 3.16 | 3.49 | 3.82 |
| | AT&T Operator Assisted Calling Card | 2.46 | 2.77 | 3.08 | 3.39 | 3.70 | 4.01 | 4.32 | 4.63 | 4.94 |
| | AT&T Automated Operator with Common Hotel Surcharge ^{**} | 1.98 | 2.31 | 2.64 | 2.94 | 3.30 | 3.63 | 3.96 | 4.29 | 4.62 |
| Rate Cap Proposal | Coalition Rate Ceiling | 3.75 | 4.25 | 4.75 | 5.25 | 5.50 | 5.95 | 6.20 | 6.65 | 7.00 |
| Live Operator Calls | AT&T Collect | 2.46 | 2.77 | 3.08 | 3.39 | 3.70 | 4.01 | 4.32 | 4.63 | 4.94 |
| | AT&T Direct to Third Number | 2.56 | 2.87 | 3.18 | 3.49 | 3.80 | 4.11 | 4.42 | 4.73 | 5.04 |
| | AT&T Collect Call (0- Surcharge) | 3.46 | 3.77 | 4.08 | 4.39 | 4.70 | 5.01 | 5.32 | 5.63 | 5.94 |
| | AT&T Collect Call with 0- Surcharge and Common Hotel Surcharge | 4.26 | 4.57 | 4.88 | 5.19 | 5.50 | 5.81 | 6.12 | 6.43 | 6.74 |

^{*} All AT&T charges are calculated at daytime rates for a 1911-3000 mile call distance. Unless otherwise specified, charge assumes a LEC calling card is used.

^{**} Uses hotel surcharge rate of \$0.80/call.

ATTACHMENT 2

Portable Cellular Phone Rentals

No Daily
Equipment
Rental
Charge



911 Calls Free
Per-Minute Charge
Includes Roaming
and Domestic
Long Distance

Now Available From

Hertz

Compliments of  **SHARED TECHNOLOGIES CELLULAR®**

To Rent A Cellular Phone From Shared Technologies Cellular

Simply sign and write your car rental record number below, and hand it to the car rental agent to receive your cellular phone. You'll receive a complete phone package that includes:

- one cellular handheld flip phone
- one battery charger
- two batteries/60 minute talk, 10 hour standby
- one battery eliminator and carrying case

When returning, deliver the cellular phone package to a HERTZ rental agent.

Charges:

*** \$1.95 per metered minute airtime includes Roaming and Domestic Long-Distance. 911 calls are FREE.**

***There is a three-minute minimum daily usage required.**
Major credit card required. Sales and usage tax apply.

My signature below shall constitute:

1. Acceptance of the terms and conditions of the Shared Technologies Cellular, Inc. ("STC") Rental Agreement, a copy of which is provided in the phone package*; and
2. Approval for HERTZ to provide STC with any credit card or other relevant information that I have provided to Hertz which is contained on my Hertz rental record and for STC to apply and process all cellular phone charges incurred by me through the card profile information; and
3. My agreement that any problems arising from the use of the STC services shall be resolved by me with STC directly; and
4. By my initial I accept _____ I reject _____ theft protection at \$2.50 for each full or partial rental day. A police report is required.

Signature: _____

HERTZ Rental Record #: _____

Hertz Agent #: _____

For cellular phone reservations away from HERTZ Car Rental
Call 1-800-933-3836

*If such terms and conditions are not acceptable to me, then I may cancel my rental within one hour, provided that I have not used the phone.

 **SHARED TECHNOLOGIES CELLULAR®**

AMERICA'S LEADER IN CELLULAR PHONE RENTALS

Hertz